

August 31, 2009

Rae Mims, Esq.  
Deputy Attorney General  
Department of Justice  
102 W. Water Street  
Dover, DE 19901

Mr. Arthur Z. Williams  
97 Lynn Broom Lane  
Dover, DE 19904

RE: State of Delaware v. Arthur Z. Williams  
Criminal Action No.: K08-10-0423IF (Offensive Touching)  
Case No.: 0810006400

**Decision After Restitution Hearing**

Dear Ms. Mims and Mr. Williams:

The defendant for the above-referenced matter pled *nolo contendere* to offensive touching and entered a Probation Before Judgment. Subsequently, the State requested that the defendant be ordered to pay restitution in the amount of \$300.00 to the victim in this case. The defendant contests the amount to be awarded as restitution to the victim and has requested a hearing. This correspondence constitutes the Court's decision after the restitution hearing.

When seeking restitution, the State bears the burden of proving the amount of the loss by a preponderance of the evidence. *Benton v. State*, 711 A.2d 792 (Del. 1998). During the restitution hearing, the State was able to prove by a preponderance of the evidence that the victim lost a total of \$300.00 cash as a result of the defendant's criminal conduct against him. Although he disputes the amount, the defendant does not deny taking cash from the victim. Rather, he asserts that he returned the cash to the victim when he left it at the house of the victim's ex-wife. The defendant alleges that the victim's ex-wife must have then taken the cash and that this intervening act relieves him from any liability for restitution because he attempted to return the cash intact. Therefore, he contends that no restitution should be awarded to the victim for the above-referenced matter.

Rae Mims, Esq.  
Mr. Arthur Z. Williams  
August 31, 2009  
Page Two

### **Facts**

The defendant took personal items from the victim after the altercation for which he was charged with offensive touching. These items included a wallet which contained \$300.00 in cash. Once the defendant left the place of the altercation, he went through the victim's personal items and found an address for the victim. He took the items that he had taken from the victim to the address and left them in the doorway as no one was home. The address at which the defendant left the items was the address for the victim's ex-wife. The victim did not live there anymore. The victim did recover all of his personal items, except for the \$300.00 in cash which was in his wallet. The defendant believes that the victim's ex-wife took the cash as he contends that he left the wallet in the ex-wife's doorway with the cash in it.

### **Intervening Acts and Restitution**

Under Delaware law, an intervening cause of injury, such as the ex-wife taking the victim's belongings or refusing to return them, does not break the causal chain of connection unless it is also a superseding cause. *Hart v. Resort Investigations & Patrol*, 2004 WL 2050511, at \*9 (Del. Super. Ct.). "In order to qualify as a superseding cause, the criminal act must be a new and independent act, itself a proximate cause of an injury, which breaks the causal connection between the original tortuous conduct and the injury." *Id.* If the intervening act was not reasonably foreseeable, the intervening act supersedes and becomes the sole proximate cause of the liability. *Id.* Conversely, if the intervening act is foreseeable, it does not break the chain of causation and liability remains with the initial actor.

While there is no Delaware law on point, several other states have explored the relationship between restitution and intervening events. In *State of Ohio v. Lacey*, 2007 WL 3408257, at \*6 (Ohio App. 5 Dist.), the Ohio Court of Appeals held that "where a person engages in criminal behavior and that behavior is followed by the negligence of a third person which directly results in damages, the defendant's earlier criminal conduct may be found to be the proximate cause of the damages if the intervening act could have been reasonably foreseen. Only intervening acts which are not reasonably foreseeable can negate liability." In the present case, the defendant engaged in criminal behavior by taking the victim's personal items, including \$300.00 in cash. By leaving the items at the doorway of an address found in the victim's belongings, it was reasonably foreseeable that someone would come along and take the items before the victim could secure them.

Rae Mims, Esq.  
Mr. Arthur Z. Williams  
August 31, 2009  
Page Three

In *State of Kansas v. Sammons*, 78 P.3d 470, 472 (Kan. 2003), the Supreme Court of Kansas held that police negligence was foreseeable in regard to stolen items and was not to be a factor in considering restitution where there was a clear causal link between the defendant and the victim's loss. In the present case, the defendant admits to taking the personal items of the victim including the cash. Therefore, there is a clear causal link between the defendant's actions and the victim's damage. Had the defendant not taken the items, the victim would not have suffered the loss of the cash.

In conclusion, any action by the ex-wife of the victim, or any other person coming in contact with the items left in the doorway of the residence listed in the victim's personal items, is a foreseeable intervening act and does not supersede the defendant's liability for the victim's loss. As a result, the Court hereby orders that the defendant pay restitution in the amount of \$300.00 to the victim, Robert Williams. The defendant shall have three months from the date of this order to pay the amount due.

**IT IS SO ORDERED.**

Sincerely,

Charles W. Welch, III

CWW:mek